

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALICIA G. ATIENZA, *et al.*,

No. C-11-3153 EMC

Plaintiffs,

ORDER TO SHOW CAUSE

v.

WELLS FARGO, *et al.*,

Defendants.

Plaintiffs filed a complaint in this action on June 24, 2011. Docket No. 1. All defendants with the exception of U.S. Bancorp filed a motion to dismiss Plaintiffs' complaint, which this Court granted with prejudice on September 2, 2011. Docket Nos. 14, 15 (Amended Order issued October 14, 2011). Thus, U.S. Bancorp is the only defendant remaining in this action.

Pursuant to Rule 4(*l*) of the Federal Rules of Civil Procedure, Plaintiffs are required to prove service of Defendant U.S. Bancorp to the Court. "Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit." Fed. R. Civ. P. 4(*l*)(1). Furthermore, Rule 4(*m*) provides, in relevant part,

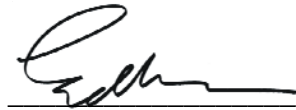
If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

1 Since Plaintiffs filed their complaint on June 24, 2011, they were required to serve Defendant U.S.
2 Bancorp, and give proof of service to the Court, no later than October 24, 2011.¹

3 Accordingly, the Court hereby issues this Order to Show Cause why this case should not be
4 dismissed without prejudice against U.S. Bancorp. Plaintiffs are instructed to file a response to this
5 Court no later than **November 10, 2011**, which includes either a proof of service to Defendant U.S.
6 Bancorp or an explanation as to why there is good cause for their failure to serve Defendant. Absent
7 proof of service or good cause, the Court will dismiss the action.

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9 IT IS SO ORDERED.

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11 Dated: October 27, 2011



EDWARD M. CHEN
United States District Judge

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¹ While October 22, 2011, is 120 days after June 24, 2011, since October 22 fell on a Saturday, the deadline extends to the next business day. *See* Fed. R. Civ. P. 6(a)(1)©.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALIZIA G ATIENZA et al,

Case Number: CV11-03153 EMC

Plaintiff,

CERTIFICATE OF SERVICE

v.

WELLS FARGO et al,

Defendant.


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 27, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alicia G.
136 Saint Francis Boulevard
San Francisco, CA 94127

Clodualdo A.
136 Saint Francis Boulevard
San Francisco, CA 94127

Dated: October 27, 2011


Richard W. Wieking, Clerk
By: Betty Lee, Deputy Clerk